

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

BRIAN JOHN ROGERS,
Defendant-Appellant.

Deschutes County Circuit Court
13FE1115; A158327

Beth M. Bagley, Judge.

Argued and submitted September 19, 2016.

Lindsey Burrows, Deputy Public Defender, argued the cause for appellant. With her on the brief was Ernest G. Lannet, Chief Defender, Criminal Appellate Section, Office of Public Defense Services.

Robert M. Wilsey, Assistant Attorney General, argued the cause for respondent. With him on the brief were Ellen F. Rosenblum, Attorney General, and Paul L. Smith, Deputy Solicitor General.

Before Egan, Presiding Judge, and Lagesen, Judge, and Schuman, Senior Judge.

EGAN, P. J.

Affirmed.

EGAN, P. J.

Defendant appeals a judgment of conviction for one count of felony failure to report as a sex offender, *former* ORS 181.599 (2011),¹ for failing to report his new address after he changed residences. Such a failure to report is a felony if “the crime for which the person is required to report is a felony.” *Former* ORS 181.599(3)(b)(B) (2011).² In contrast, “[i]f the crime that triggers the reporting requirement is not a felony, then the failure to report is a misdemeanor.” *State v. Hinkle*, 287 Or App 786, 788, ___ P3d ___ (2017) (citing *former* ORS 181.599(3)(a) (2011)). Here, the indictment alleged that defendant had a juvenile adjudication for acts that, if committed by an adult, would constitute felony sex crimes. However, defendant contends that the juvenile adjudication that triggered the reporting requirement was not a felony because juvenile adjudications are not “crimes” and, therefore, cannot be adjudications for felonies. Thus, according to defendant, the trial court erred in denying his demurrer in this case. In light of our decision in *Hinkle*, we affirm.

The relevant facts are procedural in nature. The state charged defendant, by indictment, with felony failure to report as a sex offender. The indictment alleged as follows:

“[D]efendant, on or between the 18th day of August, 2013 and the 28th day of August, 2013, in Deschutes County,

¹ Defendant was charged with conduct alleged to have occurred in August 2013, and convicted under *former* ORS 181.599 (2011). That statute has since been renumbered and amended several times. *See former* ORS 181.812 (2013); ORS 163A.040; Or Laws 2015, ch 820, § 9; Or Laws 2016, ch 95, § 4a; Or Laws 2017, ch 418, § 1. The reporting statute, now codified at ORS 163A.025, was also amended in 2015. *See* Or Laws 2015, ch 820, § 8. However, as we observed in *State v. Hinkle*, 287 Or App 786, 788 n 1, ___ P3d ___ (2017), “the enforcement statute, now codified at ORS 163A.040, has not been altered since 2011 in a manner that bears on the issues on appeal in this case.” Thus, as in *Hinkle*, for consistency, throughout this opinion we refer to the 2011 version of the statutes.

² Under *former* ORS 181.599(1)(d) (2011), a person who is required to report as a sex offender and who has knowledge of the reporting requirement commits the crime of failure to report as a sex offender if the person “[m]oves to a new residence and fails to report the move and the person’s new address.” Furthermore, under *former* ORS 181.599(3)(b) (2011),

“Failure to report as a sex offender is a Class C felony if the person violates:

“(A) Subsection (1)(a) of this section; or

“(B) Subsection (1)(b), (c), (d) or (g) of this section and the crime for which the person is required to report is a felony.”

Oregon, being a person who was required by law to report in person, as a sex offender, to the Department of State Police, a chief of police or a county sheriff or, if the person is under supervision, to the supervising agency, within ten days of a change of residence, having changed residence, and having knowledge of the reporting requirement, did unlawfully and feloniously fail to report as required. Defendant is required to report as a sex offender due to a juvenile adjudication for Attempted Sex Abuse in the First Degree and Sodomy in the Second Degree ***.”

Defendant demurred to the charge, contending that a juvenile adjudication is not a crime and, therefore, does not constitute an underlying felony crime as required by the statute. The trial court denied the demurrer. Thereafter, defendant entered a conditional guilty plea and, on appeal from the resulting judgment, assigns error to the trial court’s denial of the demurrer.

The legal issue presented by this case is whether a juvenile adjudication for acts that would have constituted a felony if committed by an adult constitutes a felony crime for purposes of *former* ORS 181.599(3)(b) (2011). We resolved that issue in *Hinkle*. In that case, we held that

“the phrase ‘the crime for which the person is required to report’ in *former* ORS 181.599(3)(b)(B) (2011) refers to the sexual offense for which a person is convicted as an adult or adjudicated as a juvenile. Thus, failing to report a move to a new residence and new address is a felony if the underlying sexual offense for which a juvenile has been adjudicated would have been a felony in Oregon had it been committed by an adult.”

287 Or App at 797. Here, it is undisputed that defendant’s juvenile adjudications are for conduct that would constitute felony sex crimes if committed by an adult; the indictment alleged that defendant was adjudicated for attempted first-degree sex abuse and second-degree sodomy. *See* ORS 161.405; ORS 163.427; ORS 163.395. Accordingly, under the reasoning set forth in *Hinkle*, the trial did not err in denying the demurrer in this case.

Affirmed.